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Ontario Labour Relations Board HIGHLIGHTS

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Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in January of this year. These decisions will appear in the January/February issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Employment Standards – The employee appealed the refusal to issue him an order for termination and severance pay – The employment standards officer found the employee was guilty of wilful misconduct for driving the employer's truck while his licence was suspended for unpaid fines – The Board upheld the refusal to issue an order, finding that the employee had failed to pay his outstanding speeding tickets and had not advised the Ministry of Transportation of his change of address in accordance with the *Highway Traffic Act,* so his licence suspension could have been properly delivered to him – The employee's assertion that he did not know about the suspension did not absolve him of the wilful misconduct - Application dismissed

BRICK WAREHOUSE LP, THE, AND DIRECTOR OF EMPLOYMENT STANDARDS; RE JEFFREY DE'ATH; File No. 1512-05-ES; Dated January 5, 2006; Panel: Timothy W. Sargeant (3 pages)

Health and Safety – The employer appealed an inspector's orders requiring a professional engineer to test and report on steel work platform brackets used in scaffolding equipment – The employer argued that the inspector's order directing that all productive work on the site stop pending the report was too broad and beyond the inspector's jurisdiction – The Board, applying a purposive approach to the interpretation of the Act, found that the professional engineer was required to both test and report on the affected equipment – The Board also considered the requirements of s. 57(3) of the Act ("An order... shall indicate generally the nature of the contravention and, where appropriate, the location...") to find that a mere recitation of the statute or regulation will not inform an employer of its alleged violation – The Board restricted the orders to the broken and damaged steel brackets and not the employer's entire operation – Matter referred to labour relations officer

EDVAC CONTRACTING LTD.; RE UNIVERSAL WORKERS UNION, LOCAL 183 AND INSPECTOR DREW ROBERTSON; File No. 3368-03-HS; Dated January 11, 2006; Panel: Susan Serena (10 pages)

Construction Industry Grievance – Health and Safety – The union grieved the employer's refusal to provide personal and medical information to it following two workplace accidents involving union members – The employer argued the information was protected by the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA") because it was collected in the course of commercial activity and the employer required the individuals' consent to disclose – Additionally, the employer refused to release a copy of the workplace injury report (Form 7), asserting that the union has no obligation to represent workers in their compensation claims, and if the union wanted the information, it could seek the worker's consent – The Board held that a company's collection or disclosure of personal information of its employees for employment-related purposes does not constitute "commercial activity" contemplated in PIPEDA – The Board also held that s. 52(1) of the OHSA pre-dated the passage of PIPEDA, so the latter could not override the

provincial legislation – In any event, the duty to disclose was required by law – Grievance granted

E.S. FOX LTD.; RE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS AND ITS LOCAL 736; File No. 2370-05-G; Dated January 11, 2006; Panel: Susan Serena, John Tomlinson, Alan Haward (6 pages)

Duty of Bargain in Good Faith – Interference in Trade Union – Strike – Unfair Labour Practice – The union argued that the employer had breached its duty to bargain in good faith and had interfered in the administration of the union – In the context of a plant closure following a strike, the employer had proposed that employees who were at work when the strike commenced were not entitled to severance pay or, alternatively, their entitlement should be capped at $11,000 – The Board found that because of the imbalance of bargaining power in this relationship (the union had lost the strike and was negotiating a back-to-work and subsequent closure agreement, so the employer clearly had the upper hand), the employer's proposal to cap severance entitlements could not be taken to impasse – In the context of a plant closure, with the union in a significantly weakened position, minimum employment standards take on increased importance for employees – To conclude that the employer could take the proposal of the cap to impasse would render the employees' statutory rights illusory – Application granted in part

FLEET INDUSTRIES, MAGELLAN AEROSPACE LIMITED; RE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, FRONTIER LODGE 171 AND RIVERSIDE LODGE 939; File No. 0280-04-U; Dated January 10, 2006; Panel: Mary Ellen Cummings (7 pages)

Health and Safety – Reprisal – An employee filed an application under section 50 of the Act alleging that his employer terminated him after his refusal to continue digging a hole near live electrical cables – Fern Roy Contractors ("FRC") contracted with Transport Personnel Services Inc. ("TPSI"), a staffing agency, for the applicant's services as a general labourer to remove a stone retaining wall on a residential property – The Board determined that FRC's on-site supervisor mishandled the refusal by becoming angry and failing to investigate the applicant's concern while the employer, TPSI, engaged in an unlawful reprisal by terminating the applicant for having sought the enforcement of the Act – The company was ordered by the Board to reinstate the employee immediately and to pay lost wages – Application granted

TRANSPORT PERSONNEL SERVICES INC. ; RE AARON MACELWEE ; RE FERN ROY CONTRACTORS ; File No. 1878-05-OH ; Dated January 16, 2006 ; Panel : Patrick Kelly (8 pages)

Practice and Procedure – Unfair Labour Practice – The union complained that the employer had committed an unfair labour practice by refusing to allow its business representative access to the members on company property – Following the representative's attendance at the workplace, the employer had issued a notice to the union under the *Trespass to Property Act* requiring that access be sought in writing, subject to prosecution – The employer argued that the issue of access was contractual in nature and should be deferred to arbitration – The union countered by stating that the employer's actions in invoking a criminal process had elevated the dispute beyond the collective agreement – The Board held that the employer's reaction to the representative's alleged breach of the collective agreement on the union's representation rights and obligations under the Act was properly within the Board's jurisdiction – Employer's objection denied – Matter proceeds to hearing

UNIVERSAL SHOWCASE/idX COMPANY; RE CJA, LOCAL 1072; File No. 2955-04-U; Dated January 20, 2006; Panel: Christopher J. Albertyn (3 pages)

Court Proceedings

Employment Standards – Judicial Review – The applicant employer sought judicial review of the Board's decision upholding the employment standards officer's finding that the employee was entitled to severance pay – The standard of review of a decision of the Board interpreting the *Employment Standards Act, 2000* is reasonableness – The Court held that it was reasonable for the Board to find that six months' notice of termination and a 25% stay bonus did not satisfy the severance pay obligation under the *Act* – There was no greater right or benefit in the employer's payment arrangements with the employee: the severance payment obligation is distinct from the obligation to give notice of termination under the *Act* – The Court also held that the Board was reasonable in finding that an offer to relocate from Toronto to Kingston, even with relocation expenses provided, was not an offer of reasonable alternative employment as contemplated by section 9(1)4 of Regulation 288/01 – Application for judicial review dismissed.

ASSURANT GROUP; RE: IGNACIA MENOR FILLION; DIRECTOR OF EMPLOYMENT STANDARDS; ONTARIO LABOUR RELATIONS BOARD; File No. 2999-03-ES (Court File No. 528/04); Dated January 17, 2006; Panel: Metivier, Gravely, Swinton JJ, (3 Pages)

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The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Kostantinos Iaonnidis v. Amalgamated Transit Union, Local 1572, Corp. of City of Mississauga, Transportation and Works Dept., Transit Division Divisional Court No. DC 0500947400	2287-04-U	Pending
United Brotherhood of Carpenters v. United Brotherhood of Carpenters, Local 93 Divisional Court No. 01/06	2069-05-U; 3055-05-M	Pending
Rhijnsburger, Cory v. Rogers Video Court File No. SC 05-029515-00 (Civil Suit)	0051-02-ES	Dismissed – Jan. 20/06
Gus Nedelkopoulos v. OLRB Divisional Court No. 77287/05 NEWMARKET	3704-04-U	Pending
Leonard Gott v. Director of Employment Standards, et al Divisional Court No. SC-05-24523-00 (Civil Suit)	0444-02-ES; 1537-03-ES	Adjourned – Feb. 28, 2006
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Pending
1333833 Ontario Inc. v. OLRB, Employment Standards Officer, Norstead Building Products Inc. Divisional Court No. DV-05-236	3559-04-ES	Pending
Wellington De Oliveira v. L.U.I.N.A 183 Divisional Court No. 51/05	0430-04-R	Pending
Benjamin Blasdell v. UFCW Local A.F.L.-C.I.O.-C.L.C. Local 1000A; Loblaws Supermarkets Ltd. Divisional Court No. 74010/04 NEWMARKET	1431-03-M; 1341-03-U	Heard - Dec. 12, 2005 - Reserved
Assurant Group v. Ignacia Menor Fillion, et al Divisional Court No. 528/04	2999-03-ES	Dismissed – Jan. 17, 2006
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U; 3552-00-U	Heard - Jan. 27, 2006 - Reserved
Association of Professional Ambulance Employees v. City of Toronto, Toronto Emergency Medical Services et al Divisional Court No. 44/04	2456-01-R	Pending
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Heard – Feb. 23,24,25,28/05 - Reserved